IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08-12-2006

CORAM :

THE HONOURABLE MR.JUSTICE A. KULASEKARAN

Second Appeal No. 664 of 2006
and
M.P. No. 1 of 2006

Ananthi .. Appellant

Versus

Ponnammal @ Vijayalakshmi .. Respondent

Second appeal under Section 100 CPC against the Judgment and Decree dated 24.11.2004 made in A.S. No. 214 of 2004 on the file of VII Additional Judge, City Civil Court, Chennai confirming the decree and judgment dated 05.01.2004 made in O.S. No. 4087 of 1999 on the file of XV Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr. K.G. Vasudevan

JUDGMENT

The unsuccessful Defendant before the courts below is the appellant in this second appeal.

2. The Plaintiff, who is the respondent herein, filed the suit in O.S. No. 4087 of 1999 before the XV Assistant Judge, City Civil Court, Chennai for partition and the said suit was decreed. As against the same, the appeal filed by the Appellant herein in A.S. No.214 of 2004 before the VII Additional Judge, City Civil Court, Chennai was dismissed. Aggrieved by the same, this second appeal has been filed by the Defendant.

3. The facts which are necessary for the disposal of this second appeal are as follows:-

The appellant is the daughter of one Sankara Subbu. The respondent claims that she is the adopted daughter of the said Sankara Subbu. It is stated by the respondent that after the demise of the said Sankara Subbu, his wife Rajammal executed a Settlement deed in favour of the respondent herein. The case of the Appellant is the respondent is not the adopted daughter of her parents and that the said settlement deed was cancelled later. With the above contentions, the parties herein approached the trial court.

4. Before the trial Court, the respondent herein marked Exs. A1 to A10 and examined herself as PW1 and the Appellant marked Exs. B1 to B13 and examined herself as DW1.

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5. The Trial Court, after framing necessary issues and considering the oral and documentary evidence, found that Ex.A1 dated 14.02.1986 was executed by Rajammal settling 50% of the suit mentioned property in favour of the respondent wherein it is clearly mentioned that she is her daughter; that Exs. A3 and A4, invitation in respect of the puberty function performed for the respondent and the SSLC Certificate respectively disclose that the respondent is the daughter of the said Sankara Subbu and Rajammal; that Ex.A5 dated 09.09.1993, legal heir certificate issued by the Revenue Department also support the case of the respondent that she is the daughter of the deceased Sankara Subbu; that the averment of the appellant that the adoption claimed by the respondent is not proved cannot be accepted; that Exs. A6 to A8 are the receipts issued by the Telephone Department as well as the Tamil Nadu Electricity Board in favour of the respondent; that Ex.A9 dated 14.09.1998 notice issued by counsel for the appellant to the respondent; that Ex.A10 dated 15.09.1993, no objection letter given by the appellant and Rajammal to the Electricity Department to transfer the electricity service connection in the name of the respondent; that considering Ex.A1, settlement deed wherein there is no clause or condition incorporated or settlor not reserved any right therein to cancel it, on the contrary, it is found mentioned therein that she had no right to revoke or change it, the trial court came to the conclusion that Ex.A2, dated 15.11.1995 deed of cancellation said to have been executed by Rajammal is not valid in the eye of law; that considering Exs. A1, A7 to A9, particularly, Ex.A10, it came to the conclusion that the property settled to the respondent under Ex.A1 and possession was also transferred to her and she was in exclusive possession and enjoyment of the same. Considering the above said documents, the trial found that the respondent proved her case decreed the suit as prayed for. The lower appellate Court also, on the same lines, dismissed the appeal filed by the defendant, confirming the judgment and decree of the trial Court.

6. The learned counsel for the appellant submitted that the respondent has not proved that she is the adopted daughter of her parents; that even assuming that the respondent is the adopted daughter, after the demise of the said Sankara Subbu, the property devolves on Rajammal, the appellant and the respondent, while so, under Ex.A1, settling undivided half share of the suit property in favour of the respondent by Rajammal is not valid; that the courts below erred in ignoring Exs. B1 to B6; that even assuming that under Ex.A1 the respondent is entitled to the alleged share, the only remedy open to her is to file a suit for different reliefs and not for partition; that the courts below failed to take note that the prayer for declaration that settlement deed, Ex.A1 said to have been executed by Rajammal is a valid document cannot be granted in the present suit, which is a suit for partition simplicitor.

7. On the above said contentions of the learned counsel for the appellant, this Court perused the judgment and decree passed by the courts below and other material records placed.

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8. As rightly pointed out by the courts below,the execution of Ex.A1 or its genuineness are not disputed by the appellant herein, but

contends that the said settlement deed was cancelled under Ex.A2. Ex.A2 is the release deed executed by Rajammal in favour of the appellant herein. The courts below perused Ex.A1, settlement deed carefully and found that no clause or conditions incorporated enabling the settlor to suspend, cancel, revoke or change the said deed. On the contrary, it is categorically mentioned that the settlor had no right to cancel or revoke it. Considering the same, the courts below rightly rejected the contention of the appellant that Ex.A1 was cancelled by Ex.A2. Indeed, the learned counsel for the appellant admitted that Ex.A2 is not a valid one, in view of the fact that in Ex.A1, there is no such clause available to cancel it.

9. The appellant has disputed that the respondent is not the adopted daughter and no valid evidence was let in by her to show that necessary functions, which are required for adoption, were performed nor even examined witnesses like natural parents to prove the adoption. Ex.A1 is not disputed by the appellant wherein the respondent is mentioned as daughter of Rajammal. In Ex.A3, invitation for celebration of puberty function the respondent is mentioned as daughter of Sankara Subbu and Rajammal. Similarly in Ex.A4, SSLC Certificate, in the columns of father and mother, the name of Sankara Subbu and Rajammal is mentioned. In Ex.A5, legal heir certificate also, the respondent is mentioned as daughter of the deceased Sankara Subbu. The Courts below, after careful consideration of the above documents rightly came to the conclusion that the respondent herein proved that she is the adopted daughter of Sankara Subbu and Rajammal. The averment that possession of the suit property was not delivered to the appellant is concerned, based on Ex.A10, No Objection Letter issued by the appellant and Rajammal to Electricity Board, electricity service connection in respect of the suit property was transferred in the name of the respondent and receipts issued by Electricity Board and Telephone receipts namely Exs. A7 and A8 and Ex.A6 prove that she is in possession of the suit property.

10. The courts below, pointing out Ex.B1, sale deed dated 11.05.1989, Ex.B2, sale deed dated 26.04.1989 found that they relate to some other property. In so far as Ex.B3, mortgage deed dated 21.07.1980 is concerned, it relates to Schedule A suit property wherein it is mentioned that the appellant alone is daughter of Sankara Subbu. The said documents were relied on to say that the respondent is not the adopted daughter. On perusal of the said documents, it is seen that Exs. B1 and B2 are after Ex.A1 and Ex.B3 is prior to it, however, Exs. A1, A2, A3, A4, A5 and A10 support the case of the respondent that she was adopted 12 years prior to the birth of the appellant. The courts below also rejected Ex.B7, demand notice issued in the name of the appellant stating that it is not a valid evidence to say that she alone is entitled to the suit property. In this context, it will be useful to refer the decision of this Court reported in (Arulmighu Visveswaraswami and Veeraraghava Perumal Temples Tiruppur, Coimbatore District vs. R.V.E. Venkatachala Gounder & another) 1996 (II) CTC 199 wherein in Para-13, it is held thus:-

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> "13. ....In view of the law laid down by the Division Bench even as early as in the year 1928, much reliance of municipal extracts and tax receipt in

order to prove title of the plaintiff cannot be accepted. Hence, the first submission of the learned Senior counsel is well-founded."

11. Section 12 of The Hindu Adoptions and Maintenance Act contemplates that "an adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family. In matters of succession on the adopted son or daughter is now entitled to the same share as an after-born natural son or natural daughter of the adoptive parents." In this context, it will be useful to refer to the decision of the Honourable Supreme Court reported in (Smt. Sitabai and another vs. V. Ramachandran) AIR 1970 Supreme Court 343 wherein in Para No.6, it was held thus:-

"6. ....The scheme of Sections 11 and 12, therefore, is that in the case of adoption by a widow the adopted child becomes absorbed in the adoptive family to which the widow belonged. In other words the child adopted is tied with the relationship of sonship with the deceased husband of the widow. The other collateral relations of the husband would be connected with the child through that deceased husband of the widow. For instance, the husband's brother would necessarily be the uncle of the adopted child. The daughter of the adoptive mother (and father) would necessarily be the sister of the adopted son, and in this way, the adopted son would become a member of the widow's family, with the ties of relationship with the deceased husband of the widow as his adoptive father...."

12. It is argued by the learned counsel for the appellant that in a suit for partition the declaration of Ex.A1 cannot be granted. The respondent herein not sought for declaration but partition on the basis she is the adopted daughter by relying on Ex.A1 to prove the adoption. If she incidentally rely upon Ex.A1, it will not invalidate her claim of partition on the basis of adoption. It is to be remembered that the appellant herein has not disputed the genuineness of Ex.A1, which is also referred earlier. It is also admitted that Ex.A2 cancellation letter is not valid, hence, the averment that the respondent has sought for declaration of Ex.A1 in the suit for partition simplicitor is incorrect. It is also not in dispute that Rajammal died, so the existing two sharers are the appellant and the respondent.

13. In view of the above said discussions, this Court is of the view that the concurrent findings of the Courts below and the remedies granted to the respondent are perfectly valid. This Court do not find any infirmity or illegality in the concurrent findings of the courts below, warranting interference by this Court or besides, any question of law, much less a substantial question of law is involved in this second appeal.

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14. In the result, this second appeal fails and the same is dismissed, at the admission stage itself. No costs. Consequently, the connected CMP is closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The VII Additional Judge
   City Civil Court
   Chennai

2. The XV Assistant Judge
   City Civil Court
   Chennai

3. The Registrar,
   City Civil Court,
   Chennai.

1 cc To Mr.K.G.Vasudevan, Advocate, SR.61321.

SA No. 664 of 2006

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